

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 559 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA
and
Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO LTD

Versus

JENTABEN CHAMANLAL THACKER WD/O CHAMANLAL JIVRAJ THACKER

Appearance:

MR PV NANAVATI for Petitioner
MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA
and
MR.JUSTICE H.K.RATHOD

Date of decision: 19/06/2000

ORAL JUDGEMENT

[Per : D.C.Srivastava,J.]

With the consent of the learned counsel for the parties, this appeal can be finally disposed off at the admission stage.

The appeal is directed against the interim award under section 163-A of the Motor Vehicles Act rendered by the Motor Accident Claims Tribunal, Kachchh at Bhuj.

The main attack of Shri Nanavaty, the learned counsel for the appellant against this interim award is that the assessment of income made by the tribunal is conjectural and since the income certificate of Rs. 6,000/- p.m. was not believed by the tribunal, it had no other material to come to the conclusion that the income of the deceased was Rs. 3,000/- p.m. Shri M.S. Shah, learned counsel for the respondents has pointed out that the petition under section 166 of the Motor Vehicles Act is already pending. He states under the instructions from his client that the said petition shall be contested on merits and shall not be got dismissed in default. In view of this statement made by Shri Shah, the dispute regarding income can be settled in the main petition under section 166 of the Motor Vehicles Act. The Tribunal, in paragraph 8 of its judgment, has observed that it is clarified that the findings regarding age and income of the deceased are given on the prima facie evidence that is on the basis of the affidavit and post mortem report etc. It further observed that the findings regarding income are given on the basis of the certificate issued by the Municipal councillor and the affidavit and the prevailing rate of income of persons selling milk. Therefore, the claimants will be entitled to produce evidence and contest the evidence of income and age of the deceased on merits at the time of deciding the main Claim Petition under section 166 of the Motor Vehicles Act and the appellants also will be at liberty to challenge the said findings on merits. In view of these observations of the tribunal, it is open to the appellants to challenge the income of the deceased in the main petition under section 166 of the Motor Vehicles Act. We do not find any ground for interference in the award rendered by the tribunal. The tribunal has directed that 35% of the amount shall be paid to each of the claimants in cash by account payee cheque and the remaining amount of 65% shall be invested in any Scheduled Bank for a period of six years. This direction safeguards the interest of the appellants. We, therefore, do not find any ground for interference in the interim award.

Learned counsel Shri Nanavaty has informed that Rs.55,250/- has been deposited with the Tribunal. Balance amount shall be deposited by the appellant with the tribunal within on or before 5th July, 2000. The appeal is dismissed accordingly with no order as to costs.

19.6.2000 (D.C.Srivastava,J.)

(H.K.Rathod,J.)

Vyas